

## **TITLE 4. BUSINESS REGULATIONS**

### **NOTICE OF PROPOSED RULEMAKING**

The California Pollution Control Financing Authority (the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **Proposed Regulatory Action**

The Authority proposes to amend Sections 8070, 8072, and 8073 of Title 4 of the California Code of Regulations (the “Amended Capital Access Regulations”) concerning the administration of the Capital Access Program for Small Businesses (the “Program”). These regulations were adopted on an emergency basis in January 2008. The current rulemaking action would make these changes permanent.

#### **Authority and Reference**

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program(CalCAP) established by the Act.

Reference: Sections 44559-44559.9 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070, 8072, 8076, 8078 and add 8078.1 of Title 4, Division 11, Article 7 of the California Code of Regulations.

#### **Informative Digest/Policy Statement Overview**

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender’s loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid to the loss reserve account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender’s loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments expand the CalCAP Program and make clarifying changes to existing regulations that implement the CalCAP program. Additionally, these proposed regulations will provide increased capacity and allow lenders and CPCFA to meet the expected increase in demand for CalCAP as it relates to the implementation of the ARB Independent Contributor Program. Finally, current CalCAP Statutes (Health and Safety Code, § 44559.4.c. and 44559.4.d.1) prescribe the maximum fees that can be paid by the borrower, lender, and CPCFA. Because an Independent Contributor is neither a borrower, lender, nor CPCFA the regulation change being sought would clarify that loan loss reserve contributions made by an Independent Contributor are not subject to the limits as set forth in Health and Safety Code 44559.4.c. and 44559.4.d.1, but fall under (Health and Safety Code, § 44559.4.d.2) which provides for the participation of Independent Contributors in CalCAP. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8070. The existing regulation defines the term “Fees” as a non-refundable fee, agreed to by the Participating Financial Institution and the Borrower, of no less than 2 percent and no more than 3-1/2 percent of the principal amount of the Qualified Loan which the Borrower shall be required to pay to the Participating Financial Institution for deposit in the Loss Reserve Account, together with an equal, matching amount which the Participating Financial Institution shall deposit in the Loss Reserve Account. The Borrower's share of the Fees may be paid from loan proceeds or in accordance with subdivision (f) of this section and Section 8078. The proposed revision will change the definition so that “Fees” is defined as set forth in Health and Safety Code Section 44559.4(c). The second amendment will change the definition of “Financial Institution” so that a “Financial Institution” will be defined as an institution as set forth in Health and Safety Code Section 44559.1(d)(1)(2)(3). The third amendment to this section clarifies that a Qualified Loan does not include any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower to have a total enrolled principal amount from all Participating Financial Institutions in excess of \$1,500,000.

Section 8072. The first proposed amendment to this section clarifies that the principal amount of the loan (without regard to the amount to be enrolled) can not exceed \$1,500,000. The second proposed change to this sections clarifies that a qualified loan equal too or greater than \$500,000 must be submitted to the Authority for pre-approval.

Section 8076. The proposed amendment adds a provision where the Executive Director of the Authority can terminate the participation of a Participating Financial Institution in the Program for providing false or misleading information regarding the Participating Financial Institution to the authority, or failure to provide the authority with notice of material changes in submitted information regarding the participating financial institution.

Section 8078. The first proposed change adds the requirement that Independent Contributors enter into a reimbursement agreement with CPCFA to cover the cost associated with the administration of Independent Contributor Programs. The second proposed change exempts Independent Contributor contributions to loan loss reserve accounts from the maximum

limitations imposed on the borrower and lender as set forth in Health and Safety Code Section 44554.4(c).

Section 8078.1. This is a new section that outlines how Participating Financial Institutions that choose to participate in special programs funded by Independent Contributors can receive preferred lender status. Where an Independent Contributor elects to pay the matching contribution and the borrower's fee or the matching contribution and all fees and funds are available, designated Participating Financial Institutions can participate as preferred lenders to process, close, service, and liquidate CalCAP guaranteed loans with reduced requirements and no prior approval by the Executive Director.

### **Disclosures Regarding the Proposed Action**

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561:** None.

**Other non-discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None

**Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:**

The Authority has made an initial determination that the Amended Capital Access Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Assessment regarding effect on jobs/businesses:** The Amended Capital Access Regulations will not have a significant affect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

**Cost impact on a representative private person or business:** The Agency is not aware of any cost impacts that a representative private person or business would necessarily incur with reasonable compliance with the proposed action.

**Small Business:** Amended Capital Access Regulations will not have an adverse impact on small business in California. The proposed regulation will not affect small businesses because they do not impose additional restrictions or cost on small businesses.

### **Consideration of Alternatives**

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Amended Capital Access Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Capital Access Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Amended Capital Access Regulations during the written comment period.

### **Agency Contact Person**

Written comments, inquiries and any questions regarding the substance of the Amended Capital Access Regulations shall be submitted or directed to:

Aaron Todd, Program Manager  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814  
Telephone: (916) 654-5740  
Fax: (916) 657-4821  
Email: [atodd@treasurer.ca.gov](mailto:atodd@treasurer.ca.gov)

Or:

Kamika McGill, Analyst  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814  
Telephone: (916)654-2492  
Fax: (916) 657-4821  
Email: [kmcgill@treasurer.ca.gov](mailto:kmcgill@treasurer.ca.gov)

### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Capital Access Regulations to the Authority. The written comment period on the Amended Capital Access Regulations ends at **5:00 p.m. on May 25, 2009.**

All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority. In the event that changes are made to the Amended Capital Access Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended Capital Access Regulations for fifteen (15) calendar days after the date on which such Amended Capital Access Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

### **Availability of Initial Statement of Reasons and Text of the Proposed Regulations**

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Amended Capital Access Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/>.

### **Public Hearing**

A public hearing regarding the Amended Capital Access Regulations has been scheduled for **11:00 AM (PST) Monday May 26, 2009 at 915 Capitol Mall, Room 470, Sacramento, CA 95814.**

### **Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Amended Capital Access Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Amended Capital Access Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

### **Availability of Final Statement of Reasons**

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/>.